



POLICE DEPARTMENT

June 6, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Joaquin Sepulveda
Tax Registry No. 934168
Bronx Court Section
Disciplinary Case No. 85749/09

The above-named member of the Department appeared before me on March 1, 2011 and March 2, 2011,¹ charged with the following:

1. Said Police Officer Joaquin Sepulveda, while on-duty and assigned to Narcotics Borough Queens, on or about July 22, 2009, inside of the Narcotics Borough Queens Command, in Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer exposed his genitalia to another member of the service.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

2. Said Police Officer Joaquin Sepulveda, while on-duty and assigned to Narcotics Borough Queens, on or about July 30, 2009, in the vicinity of 82nd Avenue and the corner of Queens Boulevard, in Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer exposed his genitalia to a second member of the service. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

3. Said Police Officer Joaquin Sepulveda, while on-duty and assigned to Narcotics Borough Queens, on or about and between July 13, 2009 through July 30, 2009, inside of the Narcotics Borough Queens Command, in Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer exposed his genitalia to a third member of the service.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

¹ The trial record was held open until March 25, 2011, for the parties to submit written summations.

4. Said Police Officer Joaquin Sepulveda, while on-duty and assigned to Narcotics Borough Queens, on or about August 20, 2009, outside of the Narcotics Borough Queens Command, in Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Officer did touch and speak to the first member of the service, referenced in Specification #1, in an inappropriate manner causing annoyance to that member of the service.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and the Respondent was represented by Dominick Revellino, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty of Specification Nos. 1, 2 and 3. It is recommended that Specification No. 4 be Dismissed.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that from December, 2008 through August, 2009, the Respondent was assigned to Narcotics Borough Queens ("NBQ") 110/111 Narcotics Module ("the team") which was housed in NBQ's offices on the second floor of the Creedmore Building in Queens ("the team's office"). The team was supervised by Lieutenant Sean Taylor, Sergeant Vincent Terrano and Sergeant Vito Ardito. The members of the team included then-Police Officer, now Detective, Patrick Fogarty and

Detectives Joeselyn Sanabria, Alexander Winters, Rodney Paige and Jose Fonseca.

All of the above-named members are still assigned to NBQ with the exception of Sergeant Terrano, who is presently assigned to the 44 precinct, and the Respondent, who is presently assigned to the Bronx Court Section.

The Department's Case

The Department called Detective Patrick Fogarty, Detective Joeselyn Sanabria, Detective Alexander Winters, and Detective Jose Fonseca as witnesses.

Detective Patrick Fogarty

Fogarty recalled that on July 22, 2009, at about 2100 hours, he returned to the team's office from the field when he had been assigned to the team's chase car. He stood in the middle of the office and began to tell other team members a story about how earlier that day he had spotted an individual who was wearing a shirt with the name "Fogarty" on the shirt. "Pretty much all" the team members who were in the room, including Detectives Joeselyn Sanabria, Alexander Winters, Rodney Paige and Jose Fonseca, began to laugh. He quickly realized that they were not laughing at his story but at something going on behind him. When he turned around he observed that the Respondent was standing behind him with his testicles, but not his penis, hanging outside his pants. Fogarty drew back and exclaimed, "Ah, what the heck!" Fogarty then "brushed it off" and walked out of the office to the stairwell area. Detective Sanabria came out and tried to speak to him but because he was "upset," he "just blew everybody off." He did not report this incident to the Internal Affairs Bureau (IAB) because he "didn't feel it reached

a level of misconduct.”

A video recording was played for Fogarty [Department’s Exhibit (DX) 1]. He identified the video as a recording of the prank that the Respondent had played on him on July 22, 2009. Fogarty identified himself in the video. The video depicts him telling his story about the shirt and his reaction when he turned around. He is heard exclaiming, “Ah, what the heck!” Fogarty testified that he received this video on September 3, 2009, attached to an email he received from an unknown person who used the name “JPUFF.” He reported it to the Integrity Control Officer (ICO) at that time because he was concerned that the video might show up on YouTube.

Fogarty further testified that on or about August 20, 2009, he was on duty seated in the team van parked outside the 111 Precinct when the Respondent approached him, said “Hey” to him in what sounded like a feminine voice, and then “lightly touched” Fogarty’s ear by flicking it with his finger. The Respondent made Fogarty feel “a little uncomfortable and confused.” He testified that he does not like it when someone touches him. He did not report this incident to IAB because he did not “feel it reached a level of misconduct.”

On cross-examination, Fogarty could not recall whether he was seated in the driver’s seat or the passenger’s seat of the van; he could not be certain whether the Respondent had flicked his right ear or his left ear; and he could not recall the specific date that this incident took place. Fogarty also acknowledged that if this incident had been the only occasion on which he had been teased by the Respondent, he would not have bothered to report it to the ICO. He mentioned it to the ICO when he reported the email and video he had received from “JPUFF” depicting the July 22, 2009, prank that

the Respondent had played on him.

Detective Joeselyn Sanabria

Sanabria testified that on Saturday, July 11, 2009, at about 1900 hours, he was seated inside a Department rental vehicle parked between two courthouse buildings in Queens waiting for a judge to sign a search warrant. He recalled that he was in the rear seat of the car and that Fonseca was seated in front of him in the front passenger seat. The Respondent drove up in a minivan to pick up Sanabria. The Respondent got out of the minivan, stood next to their vehicle and made a noise as if he was coughing or clearing his throat. When Fonseca began to laugh, Sanabria turned toward the Respondent and saw that his penis was outside his pants. His pants zipper was not unzipped. Rather, his penis was exposed above his waistline. Sanabria testified that he did not report this incident to IAB or anyone else until his September 4, 2009 official Department interview because he was not offended. He had served seven years in the U.S. Marine Corps and had seen pranks of this type before, and, therefore, "didn't think nothing of it" and "just shrugged it off." After the search warrant was signed, they left.

Sanabria recalled that on July 22, 2009, at about 2100 hours, he was inside the team's office working at his desk when he heard Fogarty talking to Fonseca. He looked up at Fogarty when he heard Fogarty say "you know, what the fuck man," and saw Fogarty throw his hands up in the air and then walk out of the room. Later that day, Fogarty told him that the Respondent had showed him his penis. Sanabria told Fogarty that he should not take it personally, that the Respondent had done it to him also, and that "he is just young" and "doesn't know any better." Sanabria testified that he did not

report this incident to IAB or anyone else because he did not view it as misconduct.

On cross-examination, Sanabria confirmed that the Respondent became upset when he was directed by Ardito to watch a hospitalized prisoner and that the Respondent told him that he believed that this was an act of discrimination by Ardito. Sanabria told the Respondent that he did not believe that this was discrimination and that he had been assigned to watch the hospitalized prisoner only because he was “the low man on the totem pole” because he believed that the Respondent had the least time in service.

Sanabria testified that he never heard Ardito use the word “spic.” Sanabria confirmed that he discussed the fact that the Respondent had made an OEEA complaint against Ardito with Paige and that he told Paige that the Respondent “should not file OEEA complaints when he is doing OEEA type offenses,” meaning “exposing himself.”

Sanabria agreed that at his September 4, 2009, official Department interview he inaccurately stated that this incident had occurred on July 30, 2009. Sanabria testified that when he was subjected to a second official Department interview, he recalled that the search warrant had been obtained on a Saturday, and that since July 30, 2009 was a Thursday, he consulted his activity log and realized that this incident had actually taken place on Saturday, July 11, 2009. Sanabria denied that he had invented the penis exposure incident because he was upset at the Respondent for having filed an OEEA complaint against Ardito.

Detective Alexander Winters

Winters testified that while he was on-duty, sitting at his desk inside the team’s office on a tour of duty that took place sometime between July 13 and July 30, 2009, the

Respondent had “pranked” him once by exposing his testicles to him. Winters testified that when he looked over at the Respondent he saw that his zipper was open and his testicles were outside his pants. Winters recalled that he smiled and chuckled when he saw the Respondent’s exposed testicles and that he “didn’t think it was a big deal.” He mentioned the prank to Sanabria who told him that “he did it to me too.”

Winters testified that he did not see the Respondent exposing his testicles to Fogarty inside the team’s office on July 22, 2009. Winters testified that although he was working at his desk as Fogarty was telling his story and that he heard Fogarty say, “Ah,” he did not look at the Respondent and, thus, he did not see whether the Respondent was exposing his testicles to Fogarty.

On cross-examination, Winters agreed that it was at his September 4, 2009, official Department interview that he mentioned this incident to anyone, other than Sanabria, for the first time. On questioning by the Trial Commissioner, Winters testified that two civilian cleaners, one of whom is a female, would enter the team’s office to pick up the trash and clean it.

Detective Jose Fonseca

Fonseca recalled that he was inside the team’s office on July 22, 2009, when the Respondent approached him at his desk and told him that he was going to “show” Fogarty “something.” Fonseca recalled that he told the Respondent, “All right, I will record it.” As Fogarty began telling a story about an incident that had occurred earlier that day, Fonseca recorded Fogarty using his cell phone. Fonseca asserted that because he was focused solely on Fogarty, he did not see the Respondent do anything. Fonseca

“synched up” his cell phone to his personal computer, which he would bring to work with him, and downloaded the cell phone video onto his personal computer. Fonseca asserted that he did not email this video (DX 1) to Fogarty and that he does not know who obtained the video by accessing his personal computer, which he would leave unattended on his desk, or who emailed this video to Fogarty under the name “JPUFF.”

On cross-examination, Fonseca confirmed that he did not personally see the Respondent exposing his testicles inside the team’s office on July 22, 2009. His only recollection of July 11, 2009, was that he was assigned as an undercover officer that day and that he had “made a buy” that day. He testified that he could not recall who was with him inside the Department rental vehicle in which he was driven to the courthouse in Queens.

The Respondent’s Case

The Respondent called Lieutenant Sean Taylor, Sergeant Vincent Terrano, Sergeant Vito Ardito, and Detective Rodney Paige as witnesses and the Respondent testified in his own behalf.

Lieutenant Sean Taylor

Taylor testified that he had no recollection of meeting with the Respondent in April, 2009, and that he had no recollection that the Respondent had requested a transfer. He did recall that in May, 2009, he called the Respondent and Ardito into his office because he had heard them arguing. Taylor could not recall the specifics of the discussion that took place in his office.

Sergeant Vincent Terrano

Terrano testified that during the period January to April, 2009, he heard Ardito use the word “spic” and that he also heard him tell Detective Vargas, an undercover officer on the team, “if you were in your own country you would be in trees picking bananas.” Terrano testified that he heard Ardito tell the Respondent that he “doesn’t even dress like a cop” and that he “looks like a criminal himself.” Terrano testified that after team members learned that the Respondent had filed an OEEEO complaint against Ardito, Sanabria told him that the Respondent “should not make” EEO complaints when he himself was “doing EEOs.” When Terrano asked Sanabria what he meant, Sanabria told him, “You’ll see.”

Sergeant Vito Ardito

Ardito testified that he had little recollection of his conversations with the Respondent. He denied that he had uttered any offensive racial remarks to the Respondent or other team members who were of Hispanic origin. Ardito confirmed that he had received a command discipline as a result of the Respondent’s OEEEO complaint and that he had been required to attend a sensitivity course. Ardito confirmed that Sanabria had attended a boxing match with him and that Sanabria’s family and Winters’ family had attended a Mets game with him.

Detective Rodney Paige

Paige testified that the Respondent often told him that Ardito was treating him badly. Paige recalled that sometime during August, 2009, Sanabria told him that “it was

fucked up that” the Respondent had made an OEE0 complaint against Ardito because “he shouldn’t be doing OEE0 things if he is going to make OEE0 complaints.” Paige testified that because he interpreted this as a “threatening” remark, he then told the Respondent “from this point on, cross your T’s and dot your I’s.”

The Respondent

The Respondent testified that shortly after he was transferred to the NBQ team in December, 2008, he was subjected to a hostile work environment by Ardito. He testified that Ardito made anti-Hispanic remarks about “spics” to him and other Hispanic members of the team such as “You guys are not used to wearing shoes” and “if you were in your own country you would be in trees picking bananas.” The Respondent requested to be transferred from NBQ to Narcotics Borough Bronx on April 23, 2009 [Respondent’s Exhibit (RX) A] and again on May 19, 2009 (RX B). He was criticized by Ardito regarding arrests he made for which he requested Departmental recognition (RX C and D). Ardito rated him “3” in five performance areas that his supervisor at his previous command had rated him either “4” or “5” (RX E). The Respondent decided to file an OEE0 complaint against Ardito on or about May 12, 2009.

The Respondent testified that he was familiar with the “beeper joke” and “balls out” “pranks.” The Respondent admitted that on July 22, 2009, inside the team’s office, he and Fonseca attempted to play a “balls out” prank on Fogarty. The Respondent admitted that he reached into his pants with his hand and “tried” to extract his “balls” from his pants. However, the Respondent claimed that, despite his best efforts, he was not able to expose his testicles to Fogarty because he was unable to pull them out of his

pants.

The Respondent recalled that on April 24, 2009, he received a text message from Winters informing him that Ardito was out to get him. The Respondent testified that Winters was trying to help him by warning him about Ardito. The Respondent testified that he told Ardito that “his own people,” meaning Winters and Sanabria, had warned about him. The Respondent denied that he had ever exposed his testicles to Winters inside the team’s office. The Respondent denied that he had exposed his penis to Sanabria and other team members while they were sitting inside a car parked between two courthouse buildings waiting for a search warrant on July 11, 2009. The Respondent confirmed that he was present between two courthouse buildings and waiting for a search warrant to be signed on July 11, 2009. He testified that he, not Sanabria, was seated inside vehicle 4399.

FINDINGS AND ANALYSIS

Introduction

Specification Nos. 1, 2 and 3 charge the Respondent with having engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by exposing his genitalia to members of his command while on duty on three separate occasions during July, 2009. Under Specification No. 1, the Respondent is charged with exposing his testicles to Fogarty on July 22, 2009, inside the team’s office. Under Specification No. 2, the Respondent is charged with exposing his penis to Sanabria outside a court building in Queens on July 11, 2009. Under Specification No. 3, the Respondent is charged with exposing his testicles to Winters inside the team’s office on a

date between July 13, 2009 and July 30, 2009.

The Respondent denied that he had ever exposed his penis or his testicles to any team member. The Respondent asserted that Fogarty, Sanabria and Winters had invented their accusations against him to get back at him for having filed an OEEA complaint against Ardito, their supervisor.

Specification No. 4 involves a non-exposure allegation that Fogarty made against the Respondent.

Specification Nos. 1, 2 and 3

With regard to Specification No. 1, the Respondent admitted that on July 22, 2009, inside the team's office, he attempted to play a "balls out" prank on Fogarty. The Respondent admitted that he reached into his pants with his hand and "tried" to extract his "balls" from his pants. However, the Respondent claimed that, despite his best efforts, he was not able to expose his testicles to Fogarty because he was unable to extract them from his pants. I credit Fogarty's testimony that he saw the Respondent's exposed testicles. If Fogarty had invented this claim to get back at the Respondent for filing an OEEA complaint against Ardito, as the Respondent asserts, it is likely that Fogarty would have claimed that the Respondent had also exposed his penis. Fogarty's testimony has the ring of truth because he testified that only the Respondent's testicles, not his penis, were exposed.

Also, the Respondent's claim is not supported by the video recording in evidence. Although the Respondent is not visible in this video at the point in time when Fogarty is seen turning around, the video depicts Fogarty's reaction when he turned to face the

Respondent. Fogarty's exclamation, "Ah, what the heck!" and his physical reaction to what the Respondent is doing is consistent with Fogarty's testimony that the Respondent had exposed his testicles. Also, the hearty group laughter that is heard on the video when Fogarty turns around to face the Respondent is consistent with Fogarty's testimony that the Respondent's testicles were hanging outside his pants. This video recording documenting Fogarty's reaction and the general laughter that is heard as he is seen turning around to face the Respondent constitutes independent evidence which supports Fogarty's claim that the Respondent had exposed his testicles.

I further credit Fogarty's testimony that he was upset after the Respondent exposed his testicles behind him while Fogarty was telling a story to co-workers. Fogarty's testimony that the Respondent's prank upset him was corroborated by Sanabria who testified that after Fogarty threw his hands up in the air and said "you know, what the fuck man," that Fogarty walked out of the office and that he later attempted to console Fogarty. Thus, I find that the Respondent intentionally embarrassed Fogarty in front of his co-workers by making him the target of this prank.

With regard to Specification Nos. 2 and 3, the Respondent denied that he had extracted his penis from his pants to display to Sanabria outside the Queens Court Building and he also denied that he had exposed his testicles to Winters inside the team's office. The Respondent argued that Sanabria and Winters invented their claims because they had socialized with Ardito and they wanted to get back at the Respondent for filing an OEEA complaint against Ardito.

I credit Sanabria's claim that the Respondent displayed his penis to him because on cross-examination Sanabria provided a detailed description of the manner in which the

Respondent played this prank, and because Sanabria's description of how the Respondent played this prank on him is similar to the prank the Respondent played on Fogarty. As with the prank on Fogarty, Fonseca was part of the Respondent's set up. Sanabria recalled that after he heard the Respondent make a noise as if he was clearing his throat or coughing, and after he heard Fonseca start to laugh, he turned toward the Respondent and then saw that the joke was that the Respondent's penis was above his waistline outside his pants.

If Sanabria had invented this allegation to get back at the Respondent for filing an OEEC complaint against Ardito, as the Respondent asserts, it is likely that Sanabria would have claimed that he was offended by the Respondent's action of exposing himself to him. However, Sanabria candidly testified that he was not unfamiliar with this type of prank and, thus, did not think anything of it.

The fact that Sanabria stated at his first official Department interview that this incident occurred on July 30, 2009, does not serve to refute his testimony that the Respondent exposed his penis to him and other team members while they were sitting inside a car parked between two courthouse buildings waiting for a search warrant. Sanabria testified that after he referenced his activity log, he realized that this incident had actually occurred on July 11, 2009, as he stated at his second official Department interview.

I reject Fonseca's testimony that he did not see the Respondent display his penis to him and Sanabria while they were seated inside the car parked between two courthouse buildings because Fonseca's testimony that although he transferred the Fogarty video from his personal cell phone to his personal computer, he has no idea who emailed this

video (DX 1) to Fogarty is not believable. As to Paige's testimony that Sanabria stated to him that the Respondent "should not make" OEEO complaints when he himself was "doing EEOs," Sanabria candidly confirmed that he told Paige that the Respondent "should not file OEEO complaints when he is doing OEEO type offenses," meaning "exposing himself." I find that the mere fact that Sanabria believed the Respondent was acting in a hypocritical manner by filing an OEEO complaint against Ardito when the Respondent was exposing himself to members of the team, does not serve to discredit Sanabria's claim that the Respondent exposed his penis to him and other team members while they were sitting inside a car parked between two courthouse buildings.

With regard to Winters, the Respondent confirmed that Winters had tried to help him by warning him, in an April 24, 2009 text message, that Ardito was out to get him. This helpful action by Winters is inconsistent with the Respondent's assertion that Winters falsely claimed that the Respondent had "pranked" him by exposing his testicles to him inside the team's office, and raises the question of why Winters would make a false accusation against the Respondent when Winters had tried to help him by warning him about Ardito. Also, if Winters was inventing a false allegation because he wanted to get back at the Respondent for filing an OEEO complaint against Ardito, it is unlikely that Winters would have testified, as he did, that he had chuckled when he saw the Respondent's exposed testicles, and it is likely that Winters would have claimed that he had seen the Respondent exposing his testicles to Fogarty inside the team's office on July 22, 2009. Yet Winters testified that he did not see the Respondent exposing his testicles to Fogarty inside the team's office on July 22, 2009. Winters testified that although he was working at his desk as Fogarty was telling his story and that he heard Fogarty say,

“Ah,” he did not look at the Respondent and, therefore, he did not see the Respondent exposing his testicles to Fogarty.

Finally, I do not credit the Respondent’s claim that Sanabria and Winters falsely alleged that the Respondent had engaged in exposure pranks on them merely because Sanabria and Winters had attended a boxing match with Ardito and their families had been at a baseball game together.

The Respondent is found Guilty of Specification Nos. 1, 2 and 3.

Specification No. 4

The Respondent is charged with having engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by touching Fogarty and speaking to him in an inappropriate manner on or about August 20, 2009, which caused annoyance to Fogarty.

Fogarty testified that when the Respondent approached him while he was seated in the van, the Respondent only uttered the single word “hey” in what sounded to Fogarty like an imitation of a female voice and “lightly touched” Fogarty’s ear by flicking it once with his finger. As Fogarty candidly acknowledged, this extremely brief teasing was so minor in nature and caused him so little annoyance that he could not recall whether he was seated in the driver’s seat or the passenger’s seat at the time; he could not be certain whether the Respondent had flicked his right ear or his left ear; and he could not recall the specific date that this incident took place.

Fogarty also acknowledged that he is extremely sensitive to anyone touching him and that if this incident had been the only occasion on which he had been teased by the

Respondent he would not have bothered to report it to the ICO. He only mentioned it in passing as he was complaining to the ICO about the video he had received from “JPUFF” regarding the prank that the Respondent had played on him on July 22, 2009.

Based on Fogarty’s description of what the Respondent said and did, this extremely brief, playful teasing does not rise to the level of actionable misconduct.

It is recommended that Specification No. 4 be Dismissed.

PENALTY

In order to determine an appropriate penalty, the Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974).

The Respondent was appointed on January 20, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Assistant Department Advocate recommended that the Respondent be required to forfeit the 31 days he served on pretrial suspension and that he also forfeit 14 vacation days for a total forfeiture of 45 days, and that he also be required to serve one year on dismissal probation.

In attempting to fashion an appropriate penalty recommendation, I note that the Respondent’s co-workers at NBQ did nothing to discourage his behavior in that one or more of the Respondent’s co-workers responded with laughter during each of his three exposure pranks. The video of the Respondent’s “balls out” prank on Fogarty shows that this prank was greeted with general laughter. Also, Winters testified that he chuckled and smiled at the Respondent’s “balls out” prank on him, and Sanabria testified that Fonseca

had laughed at the Respondent's "penis out" prank on him.

Moreover, Sanabria and Winters both testified that they thought nothing of the pranks that the Respondent had played on them and that they only mentioned these pranks at their respective official Department interviews because they were questioned about the Respondent's prank on Fogarty, a prank which Fogarty did not report for nearly seven weeks and only reported because he was concerned that the video might be broadcast on YouTube. Thus, if Fonseca's video of the prank that the Respondent played on Fogarty had not been emailed to Fogarty, he would not have contacted the ICO and this prank and the pranks that the Respondent played on Sanabria and Winters would never have become the subject of a Department investigation.

I have also taken into consideration the fact that the pranks that the Respondent played on Fogarty and Winters took place inside the team's office when only team members were present. However, the Respondent played these two exposure pranks inside the work area of a narcotics team, not inside a locker room, and Winters offered unrefuted testimony that two civilian cleaners, one of whom was a woman, regularly entered the team's office to pick up garbage and clean it. Thus, although the Respondent appears to have viewed the office as the functional equivalent of a locker room, the Respondent should have been aware that the office area did not provide the privacy of a locker room and that it was not an appropriate place to engage in exposure of male organ pranks.

The prank that the Respondent played on Sanabria is more troubling because it took place outside. Sanabria's description of the manner in which the Respondent exposed his penis establishes that the Respondent intended that only the team members

inside the vehicle would be able to see his penis. However, since this exposure took place in a parking area between two courthouse buildings, the Respondent should have been aware when he decided to expose his penis that he could not be certain that his penis would not be visible to a passerby or someone looking out a window of one of the buildings.

As a result of these charges, the Respondent is now clearly aware that, even though some of his co-workers laughed at each of his pranks, these pranks were inappropriate and constituted conduct prejudicial to the good order, efficiency or discipline of the Department. Thus, imposition of a one year period on dismissal probation does not appear to be a necessary component of the penalty to be imposed on the Respondent for engaging in this misconduct.

In attempting to fashion an appropriate penalty recommendation, I have also taken into consideration that the Respondent has never had an overall performance rating below 4.0 and that the Respondent has no prior disciplinary record.

Having examined the facts and circumstances surrounding the Respondent's three separate acts of misconduct, I recommend that the Respondent forfeit the 31 days he served on pretrial suspension and that he also forfeit 14 vacation days for a total forfeiture of 45 days.

Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner - Trials

APPROVED
JAN 05 2012

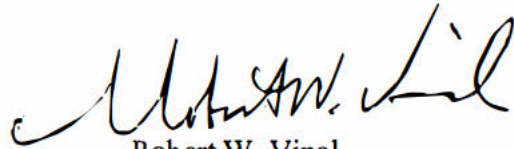
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOAQUIN SEPULVEDA
TAX REGISTRY NO. 934168
DISCIPLINARY CASE NO. 85749/09

The Respondent received an overall rating of 4.0 on his 2009 performance evaluation, 4.0 on his 2008 evaluation, and 4.0 on his 2007 evaluation. He has no medals. [REDACTED] He has no prior formal disciplinary record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner - Trials